

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARL McCCEE FOUNTAIN,

11 Petitioner, No. CIV S-04-2350 GEB DAD P

12 vs.

13 JAMES YATES, Warden, et al.,

14 Respondents. ORDER

15 /

16 By order filed March 31, 2005, the court notified respondents that the state court
17 transcripts have not been lodged with the court despite counsel's indication that the clerk's
18 transcript in two volumes and the reporter's transcript in two volumes "are being lodged with this
19 Court contemporaneous with the filing of Respondent's answer." (Resp'ts' Answer at 4,
20 Resp'ts' Amended Answer at 4.) The court directed respondents to lodge the state court
21 transcripts within sixty days. More than sixty days have passed, and the docket does not reflect
22 that the transcripts have been lodged. Respondents will be ordered to lodge the transcripts and
23 show cause for their failure to respond to the court's order.

24 The court has received from petitioner a document addressed to the clerk of the
25 court, with an attached exhibit. Petitioner's document was not accompanied by a proof of
26 service. If petitioner wishes to expand the record to include an additional exhibit, he must file

1 and serve a motion in which he establishes the identity and authenticity of the document and
2 demonstrates that the document should be included in the record in this case. See Rule 7, Fed. R.
3 Governing § 2254 Cases.

4 Petitioner has also filed a document titled “Ex-Parte Motion to Produce
5 Documents,” requesting that the court order a hearing because of respondents’ failure to lodge
6 the state court transcripts. Attached to the motion are copies of out-of-circuit decisions
7 concerning the procedure to be followed when respondents fail to file an answer to a habeas
8 petition. The attached proof of service does not reflect service of the motion on respondents’
9 counsel. The court will not entertain an ex parte motion. Moreover, the respondents in this case
10 have not failed to file an answer to the habeas corpus petition and petitioner’s authorities are
11 therefore inapposite.

12 Petitioner is cautioned that all subsequent filings must include proof of service on
13 respondents’ counsel.

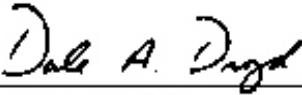
14 Accordingly, IT IS HEREBY ORDERED that:

15 1. Within ten court days from the date of this order, respondents shall (a) show
16 good cause for their failure to respond to the court’s order filed March 31, 2005, and (b) lodge
17 the state court transcripts, consisting of the reporter’s transcript in two volumes and the clerk’s
18 transcript in two volumes;

19 2. Petitioner’s June 1, 2005 letter and exhibit will be disregarded; and

20 3. Petitioner’s June 2, 2005 filing, titled a motion to produce documents but
21 requesting that the court order a hearing, is denied.

22 DATED: June 27, 2005.

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24 DALE A. DROZD
25 UNITED STATES MAGISTRATE JUDGE
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DAD:13
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